United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/926
30 July 1999

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 926

Case No. 1001: AL ANSARI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, Vice-President, presiding; Mr. Chittharajan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Nabil Ra'ouf Al Ansari, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, successively extended until 30 November 1997 and 28 February 1998, the time-limit for the filing of an application to the Tribunal;

Whereas, on 7 January 1998, the Applicant filed an application requesting the Tribunal to order:

"i. [That the] decision [to terminate his appointment] in the interest of the Agency [be rescinded].

ii. [That the] Applicant [be reinstated] to duty effective the date of [his] suspension, and [that] the period of his cessation [be considered], as a special leave

with full pay plus due interest.

iii. [That] should [the] Respondent refrain from reinstating [the] Applicant, [the Respondent is to] compensate him for his due salaries until a judgement has been ordered, plus a compensation for the severe injury caused to [the] Applicant, to be paid in US dollars at the rate available to UN [staff] at the time of his separation.

iv. [That the Applicant be paid] counseling fees and secretarial expenses estimated at US $1,500."

Whereas the Respondent filed his answer on 3 June 1998;

Whereas the Applicant filed written observations on 27 August 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 11 August 1982, on a temporary indefinite appointment as Assistant Field Personnel Officer, in the Syrian Field Office. Effective 1 October 1986, the Applicant was transferred to the post of Deputy Field Relief Services Officer, and on 9 November 1993, the title of his post was changed to Deputy Chief, Field Relief and Social Services Programme (D/CFRSSP). In a letter dated 4 May 1995 to the Director of Relief and Social Services, Headquarters, Vienna, from the Chief, Field Relief and Social Services Programme (C/FRSSP), a division of responsibilities between the D/CFRSSP, and the C/FRSSP was confirmed. The D/CFRSSP would be responsible for the day to day running of the Department. On 7 February 1995, in a letter from the Director of UNRWA Affairs to the Deputy Director of Administration and Human Resources, UNOV, the D/CFRSSP's duties were spelled out to include "special responsibility in the supervision of the Eligibility and Registration Division and the Special Hardship Programme."

On 19 April 1995, at the request of the C/FRSSP, the Applicant and two other staff members prepared a report detailing a number of irregularities with the Special Hardship Programme (SHP) in the South Area, Syrian Arab Republic (SAR). They recommended that a board of inquiry look into the behaviour of the Area Relief and Social Services Officer

(ARSSO). On 24 April 1995, the Deputy Field Supply & Transport Officer, SAR, reported details of his investigation into the reasons for substantial shortages in commodities after completing a distribution cycle in March/April 1995.

On 25 April 1995, following these reports, the Director of UNRWA Affairs, SAR, convened a Board of Inquiry (BOI) to examine the procedures for according Special Hardship Status (SHS) to Palestine Refugees in Dera'a and the procedures of UNRWA's distribution system.

On 21 May 1995, after hearing 70 hours of testimony, the BOI submitted a detailed report to the Director. The BOI concentrated its efforts on ascertaining who was responsible for the shortage in commodities at Dera'a and whether the shortage was in any way linked to procedures of according SHS to refugees. The BOI discovered that there was a link between the two matters, principally because of the disorder in procedures and the lack of internal controls leading up to granting of SHS and the notification thereof to the beneficiaries, as well the lack of supervision in this process.

The BOI noted a number of irregularities: some beneficiaries were not notified until months later that they had been granted SHS. Special Hardship Case (SHC) rolls contained the names of some 400 refugees whose dates of birth were in the 19th century and very early in the 20th century, implying that deceased beneficiaries were kept on the rolls so their rations could be sold off for personal gain. Failure to update the distribution lists by computer allowed substantial thefts of rations to occur. Failure by the responsible staff (in particular, the Registration Clerk (RC) and the ARSSO) to register all new SHC and to distribute the proper ration cards led to the distribution of rations to individuals not entitled to them. In addition, the BOI noted that close personal relationships between Field Office staff and certain staff at the South Area allowed improprieties to go unnoticed.

The BOI was of the opinion that carelessness in following basic office procedures, the non-observance of Agency Regulations and Rules, and a total lack of supervision of staff

both from the Field Office and particularly from the Area Officer, South, created a perfect climate of confusion which allowed abuse of the distribution system. That confusion permitted wholesale fraud with staff taking rations for personal gain, converting them to cash by selling them to merchants and apparently giving and/or selling them to other staff. Also, the BOI found that the reporting lines in the Department of Relief and Social Services (especially between the ARSSO and the Field Eligibility and Registration Officer, the Field Welfare Officer, the RC and others) were very blurred.

In general, the overall picture of the South Area, as viewed by the BOI, was one of rampant and pervasive dishonesty and deviousness, among the entire staff. It described a fair characterization of the staff as those who participated in the dishonesty and those who were aware of it. The BOI noted that this was how the Agency's operations were perceived by the refugees also.

The BOI noted that the Applicant insisted on using a local blue ration card with coupons attached and no serial number for SHC rations instead of the SHC index card specified in Relief Services Instruction No. I/94, Annex E. It noted with even deeper concern that of all of the witnesses called by the BOI, and all the people familiar with the case, the Applicant was the only person who could not find any fault in the performance of the RC in Dera'a .

On 31 May 1995, the Director of UNRWA Affairs informed the Applicant that it had come to the Agency's attention that he may be guilty of misconduct or serious misconduct in connection with a scheme which allowed for the misappropriation of Agency commodities destined for SHC. He further advised the Applicant that effective close of business that day, he was suspended from duty without pay, in accordance with the provisions of staff rule 110.2, pending the outcome of investigations into the charge.

By letter dated 4 June 1995, the Applicant requested the Director of UNRWA Affairs amongst other things, to reverse the decision to suspend him without pay. The Director of UNRWA Affairs responded on 11 June 1995, stating that he had reviewed the circumstances

of the Applicant's case and had found that the decision to suspend him was fully justified and implemented in accordance with Agency procedures and would therefore be maintained.

In early July 1995, the BOI submitted to the Director of UNRWA Affairs Annex 1 to its report of 21 May 1995. With respect to the Applicant this document states that the BOI found him to be "the most singular proponent of the use of the LBRC [local blue ration card] and coupon systems in the Relief Department based on his own testimony and that of many others ..." The BOI was also critical of the Applicant's earlier investigation of the ARSSO in connection with SHC. Noting that the Applicant failed to look into the RC whom it found to be a central figure in misappropriation of commodities and fraud and that the Applicant was the ultimate supervisor of the Registration Division, the BOI found his investigation to be "more of a white wash than a true investigation". The BOI further noted that the Applicant had been expressly delegated to handle the SHP. It was of the opinion that the Applicant, although not responsible for organizing the scheme, was completely remiss in his duties for allowing it to continue so long and for failing to uncover it over the years.

On 25 June 1995, the Director of UNRWA Affairs wrote a letter to the Applicant. He referred to the irregularities found by the BOI in the South Area and the Central Area. He stated that in light of the Applicant's central role in the management of the Registration Division as well as the SHP, the Applicant's long association with the Relief and Social Services Department, and the fact that the fraudulent scheme had a very long history, he had decided that the Applicant's conduct constituted gross negligence. Therefore, he said he had lost faith in the Applicant's ability to perform his duties. The Director cited the Applicant's continued use of the local blue ration cards and his failure to adhere to the Relief Services Instruction which required the Department to use the plastic ration cards from Headquarters. He consequently terminated the Applicant in the interest of the Agency under staff regulation 9.1 and Area staff rule 109.1 effective close of business that day.

On 12 July 1995, the Applicant wrote to the Director of UNRWA Affairs, requesting reversal of the decisions to suspend him and to terminate him, decisions which he alleged were arbitrary. On 20 August 1995, the Director informed the Applicant that he had reviewed the decision in his case and was satisfied that there was no reason to change it.

On 30 August 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB transmitted its report to the Commissioner-General on 19 January 1997. Its evaluation, judgement and recommendation read, in part, as follows:

"**EVALUATION AND JUDGEMENT**

16. In its deliberations, the Board examined all documents made available to it including the Appellant's personal file, and came out with the following:

A. By reference to the appeal, the Board noted that the Appellant's contention that his problem with the Agency was affected by misleading information.

B. The Board of Inquiry interviewed the Appellant on 20 June 1995. The Board here notes that it was not possible to find any written authorization to expand the investigation of the Board of Inquiry to the Field Office Staff after it submitted its report on 21 May 1995.

On the contrary, the same Chairman and members of the Board of Inquiry, were requested officially to form a Board of Inquiry to investigate the situation in Central Area, (DUA, SAR Strictly Confidential A/P/INQ of 1 June 1995).

C. The Director in his strictly confidential letter of 25 June 1995, informed the Appellant of the following charges:

1. The Appellant being 'the responsible Senior Member for the Registration Division, as well as the Special Hardship Cases Programme and as such ultimately and exclusively controlled the entry of monthly data into the computer, on Special Hardship Cases, distribution lists before and after distribution and all other registration functions'.

2. The Appellant's insistence on using the Local Blue Ration Card for distribution and thereby failing to adhere to the Relief Services Instructions.

On the basis of the above, the Director decided that the Appellant's conduct constituted gross negligence, and the Appellant's appointment was terminated in the interest of the Agency.

D. Following consultations with the representative of the Relief & Social Services Department HQ Amman on 19 January 1997, the Board notes that the overall responsibility of the Relief & Social Services Programme is vested in the Chief Field Relief & Social Services Programme who should be considered 'the responsible Senior Staff Member' for all divisions of the department whereas the FERO [Field Eligibility and Registration Officer] is specifically responsible for the Registration Division and the Field Welfare Officer responsible for the Special Hardship Cases Programme.

The Board also noted paragraph 3.7 of the Board of Inquiry's report dated 21 May 1995, which states 'the Board of Inquiry determined that the reporting lines under the present organization of the Department of Relief & Social Services are very blurred'.

E. The Board was astonished to establish that the Chief, Field Relief and Social Services Programme's opinion was not sought by the Board of Inquiry.

F. The Board also notes that the Board of Inquiry relied heavily on rumour, hearsay, and allegations, which were not substantiated. Examples are found in the Board of Inquiry's report and in what were termed as Annexes.

G. The Board is convinced that the use of the Local Blue Ration Cards was in conjunction with and not instead of the standard Agency card for Special Hardship Cases. Obviously this was intended as an extra control measure, which could fail or succeed, and of which the Chief, Field Relief & Social Services Programme must have been aware.

H. The Board has noted that in the Board of Inquiry's report, there was mention of 'a considerable amount of external [interference] in the Agency's programmes, by local authorities including the military, security and GAPAR [Governmental General Authority for Palestinian Refugees]' (...). However,

the Board notes with concern that the Board of Inquiry has relied on GAPAR as a source of information and reference. Many examples are found in the Board of Inquiry's report and Annexes.

J. By reference to the Appellant's personal file, the Board noted that there were no Periodic Reports available therein. However, the Board took note of the Appellant's satisfactory performance in the only two periodic Reports available in the Board's documents:

1. The comments of Field Relief and Social Services Officer, on the Appellant's Periodic Report of 31 December 1991, read that 'plans and controls the budget well resourceful and efficient ...'

2. The comments of the Director of UNRWA Affairs, on the Appellant's Periodic Report of December 1993, read 'has a good grasp of the various programmes and related procedures'.

The Board therefore, finds that there is inconsistency in the Administration's assessment of the Appellant's conduct.

D. The Board therefore, resolved that based on the evidence produced, there are so many doubts about the involvement of the Appellant in the act of misappropriation of Agency commodities destined for Special Hardship Cases.

IV. **RECOMMENDATION**

18. In view of the foregoing, and without prejudice to any party, the Board unanimously makes its recommendation, that the Administration's decision to terminate the Appellant's services in the interest of the Agency pursuant to Area staff regulation 9.1 be reviewed with a view to reinstating the Appellant in his previous position with the Agency."

On 19 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"I enclose herewith a copy of the report of the Area Staff Joint Appeals Board, submitted to me under cover of a memorandum dated 19 January 1997, on your

appeal. I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that the Board of Inquiry had no authority to continue its investigation into Field Office staff after it had submitted its main report. The Board made its own inquiries as to the overall responsibility for the Special Hardship Case Programme and the ration cards and believed that the C/FRSSP and not the Deputy (such as you) had that responsibility. Further, the Board believed that much of the evidence upon which the Board of Inquiry proceeded was rumour and hearsay. Finally, it was concerned about GAPAR being a source of information for the Board of Inquiry. The Board concluded that there was doubt about your involvement in the misappropriation of commodities and recommended that the decision to terminate your appointment be reviewed and reversed.

Contrary to the Board's statement, the Board of Inquiry had full authority to extend its investigation into the Field Office. In relation to the issue of overall responsibility for the operations that were affected by widespread fraud, the Joint Appeals Board has ignored your own testimony in which you stated that these were matters within your own responsibility. Further, I cannot accept the Joint Appeals Board's dismissal of evidence, as it failed to identify which evidence it believed was untrustworthy. Although I agree with the Board that there was no evidence that you were involved in the misappropriation of rations, this was not the finding of the Board of Inquiry nor was it the basis for the termination of your services. Your services were terminated in the interest of the Agency because your poor management of the Special Hardship Programme and the Registration Division constituted gross negligence. Accordingly, I reject the conclusions and recommendation of the Joint Appeals Board and I dismiss your appeal."

On 7 January 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent's decision to suspend the Applicant without pay was arbitrary because it amounted to a finding of guilt presupposing that there had been an investigation where misconduct was established.

2. The Respondent's decision to terminate the Applicant was arbitrary because he was not negligent in the performance of his duties and he was not responsible for

managing the SHP or the Registration Division.

3. The investigations by the BOI which were basis for the decision to terminate the Applicant's appointment, were tainted by prejudice, bias and influenced by extraneous factors.

Whereas the Respondent's principal contentions are:

1. The Applicant had primary responsibility for the SHP and the decisions to suspend the Applicant without pay and subsequently to terminate him were within the Respondent's discretion.

2. The Applicant has not provided any evidence to prove that the Respondent's decisions were motivated by prejudice or influenced by other extraneous factors.

The Tribunal, having deliberated from 5 to 30 July 1999, now pronounces the following judgement:

I. The Tribunal's task has not been made easy by virtue of the contents of the application. The case is shrouded in an atmosphere of sometimes bizarre and almost inevitably unsubstantiated allegations made against persons who were concerned with the investigation of the Applicant in the performance of his work which have never been tried or tested. The atmosphere has further been clouded by vague, unsubstantiated allegations of misconduct, ineligibility and prejudice against persons who were concerned with the original investigations carried out by the BOI. Furthermore, the submissions contain denials or assertions of untruthfulness in relation to certain findings of the BOI which were supported by the Applicant's own evidence given before it and denials in the face of what had previously been asserted by the Applicant to be facts. For instance, the Applicant now denies that he had

a special responsibility for the operations which were being investigated by the BOI when on two separate occasions he had given evidence that he had this very responsibility, first on 15 May 1995 and again, after he had been suspended from duty, on 20 June 1995.

II. On 19 April 1995, at the request of C/FRSSP, the Applicant and two other staff members prepared a report detailing a number of irregularities with the SHP in the South Area. They recommended that a board of inquiry look into the behaviour of the ARSSO. On 24 April 1995, the D puty Field Supply and Transport Officer reported details of his investigation concerning substantial shortages in commodities after a distribution in Dera'a.

III. Following receipt of the reports referred to above, the Director of UNRWA Affairs, SAR, convened a BOI on 25 April 1995, which was instructed to examine the procedures for according SHS to Palestine refugees in Dera'a and the procedures of UNRWA's distribution system. The Tribunal, having considered the record in this case, is satisfied that an exhaustive and careful investigation was carried out by that BOI. The BOI found that the South Area was a picture of "rampant and pervasive dishonesty and deviousness which reached across the entire spectrum of staff" and found that an identified official who was controlling all distribution of rations in that area had by various means been siphoning off commodities earmarked for distribution, for some time. It also found that other officials had been either grossly negligent or careless in the performance of their respective duties.

IV. The BOI also ascertained that there was insufficient supervision of the SHP and it noted with concern that the Applicant had insisted on the use of local blue ration cards instead of the SHC index cards which were less amenable to misuse. It also noted that the Applicant in his own inquiry had found no fault with the performance of a particular official whom the BOI found to have been the main perpetrator of the misapplication of supplies and of fraud.

V. After considering the BOI's report, on 31 May 1995, the Director of UNRWA Affairs informed the Applicant that it had come to the Agency's attention that he might be guilty of misconduct or serious misconduct, in that it appeared he was involved in a scheme that allowed for the misappropriation of the Agency's commodities destined for SHC and he was advised that an investigation of this charge was being made and pending the outcome of this investigation, he was suspended from duty without pay, effective close of business on that day.

VI. Exception is taken by the Applicant in his application to that suspension. The Applicant's argument presupposes that there had been an investigation whereby misconduct had been established on the part of the Applicant. The power of suspension is dealt with in Area staff rule 110.2, which provides that "if a charge of misconduct is made against a staff member ... and the Commissioner-General considers that the charge is 'prima facie' well-founded or that the staff member's continuance in office pending an investigation of the charge would prejudice the interests of the Agency, then the staff member may be suspended from duty, with or without pay, pending investigation, the suspension being without prejudice to the rights of the staff member". The Tribunal is satisfied that there was sufficient information before the Director to entitle him to have considered that the charge made against the Applicant was prima facie well-founded and is accordingly satisfied that the said suspension was lawful.

VII. In Annex 1 to its original report, the BOI found that the Applicant was a prominent proponent of the local blue ration cards, despite the fact that the use of these cards had facilitated fraud. It also found that the Applicant's earlier investigation of irregularities in which he had found no fault with the role played by the RC was a mere whitewash as it did not consider the role of the RC, whom the BOI found to be a central figure in the

misappropriation of commodities and in the perpetration of fraud. The BOI further found that the Applicant was the ultimate supervisor of the Registration Division and had been expressly delegated to handle the SHP. It concluded that if the Applicant was not responsible for organizing the scheme whereby there had been fraudulent manipulation of the special hardship cases and rations in the South and Central Areas "he was extremely remiss in his duties for allowing it to continue for so long and for failing to uncover it over the years".

VIII. On 25 June 1995, the Director of UNRWA advised the Applicant that his conduct as found by the BOI, constituted gross negligence and that he had lost faith in the Applicant's ability to perform his duties and had therefore decided to terminate the Applicant's appointment in the interest of the Agency.

IX. The Tribunal is satisfied that the findings of the BOI upon which the Respondent relied when he decided to terminate the Applicant's appointment in the interest of the Agency were findings of gross negligence which amounted to wilful misconduct or irresponsible conduct or a wilful failure to perform his duties as distinct from finding of mere inefficient or inadequate performance resulting from innate inefficiency or incapacity or the like. In the circumstances, whilst the Tribunal is satisfied that the decision was in the nature of a disciplinary measure, it was justified and accordingly did not constitute an abuse of power by the Respondent.

X. On 30 August 1995, the Applicant appealed to the JAB. The JAB was of the opinion that the BOI had no authority to continue its investigation into Field Office staff after it had submitted its main report. The Tribunal is satisfied that this finding resulted from a misconstruction or misunderstanding by the JAB as to the terms of reference of the BOI and/or as to the manner in which it had gone about its investigation and submitted its report.

The BOI, having taken evidence about and reported upon the operation of the SHP in the South Area, then moved the focus of its inquiries to the Field Office in Damascus. The Tribunal is satisfied that this was not "an expansion" of the BOI's terms of reference as was held by the JAB, but was a change of location required to complete the BOI's mandate "to examine the procedures for according special hardship status in Dera'a as well as the procedures in the distribution system."

XI. The BOI had interviewed and required the Applicant to give evidence before it on two occasions, firstly as a witness when the initial investigation was taking place and secondly as a suspect, after he had been suspended from duty. The Tribunal is satisfied from the record that he was given details of the matters under investigation, that he was confronted with the allegations insofar as they concerned him and that he was given ample opportunity to fully state his position and that he was afforded due process.

XII. The Applicant submits that the findings of the BOI were flawed both by reasons of a want of evidence to support its findings insofar and by virtue of the BOI having been tainted by improper motive or prejudice. The Tribunal finds that there was cogent and persuasive evidence before the BOI which amply justified its findings with respect to the Applicant. The Tribunal has found no evidence of bias, prejudice or any improper motive on the part of the BOI.

XIII. The Applicant claims malevolent interference in the affairs of the Agency in Syria by the General Authority for Palestine Refugees which he maintains is linked to an unidentified and mysterious "outside faction". He claims that this "outside faction" is said to be able to place its members into key posts in the Agency and dominate the Area Staff Union. It is alleged that it formed "Shadow Committees" and instigated the mass termination of staff,

including the Applicant, by providing false witnesses, intimidating staff members and influencing senior officials of UNRWA. There is also an allegation of an "outside politico-professional board" or "bureau" involved in this process. The Respondent claims that he is unable to respond properly to these vague and unspecified allegations which were made without any supporting evidence. Only two members of the "outside faction" were identified (and then only by mere assertion) and other members of the "politico-professional board" remained anonymous. The alleged motives of these bodies to bring about the termination of the services of a number of staff members were never explained. The Tribunal finds that these vague and bizarre allegations have not been substantiated and cannot be acted upon by the Tribunal.

XIV. The Applicant further alleges that he could not have been negligent in the conduct of his duties and responsibilities regarding the SHP because it was he who uncovered the fraud in the South Area. The Tribunal finds that the Applicant is being somewhat disingenuous in taking credit for initiating the investigation, which he and two other staff members were in fact requested by his superior to undertake. The Tribunal furthermore notes that the BOI properly concluded that the investigation was in effect a whitewash and that, in fact, the Applicant's investigation was so superficial in its approach that it was further evidence that the Applicant was remiss in the performance of his managerial duties. The Tribunal is satisfied that this point is well taken.

XV. The Applicant now asserts that he was not the Manager of the SHP. This is contradicted by a letter from the Director of UNRWA Affairs dated 7 February 1995 to UNOV which refers to the express delegation of this responsibility to the Applicant and the appropriate reasons for this delegation, namely to allow the C/FRSSP, to concentrate on the development programme. Further, the Applicant himself testified before the BOI that he had special responsibility for the SHP.

XVI. The JAB rejected the BOI's findings. The JAB found, based on the evidence produced, that there were many doubts about the involvement of the Applicant in the act of misappropriation of the Agency commodities destined for SHC. It recommended that the Administration's decision to terminate the Applicant's services in the interest of the Agency be reviewed with a view to reinstating the Applicant in his previous position with the Agency.

In the opinion of the Tribunal, the findings of the JAB were misconceived. The decision to terminate the Applicant's services in the interests of the Agency had been made on the conclusion of the Respondent that the Applicant had been guilty not of misappropriation but of gross negligence in the supervision and the administration of the SHP. The Tribunal is further satisfied that the finding of the JAB that the Applicant was not vested with the overall responsibility for the Relief and Social Services Programme was contrary to the Applicant's own evidence and was unwarranted. The Tribunal is also satisfied that this finding was made in circumstances where the evidence clearly established that the express delegation of that very responsibility had been made to the Applicant. The JAB's emphasis on the BOI's determination "that the reporting lines under the present organisation of the Department of Relief and Social Services are very blurred" had no application insofar as the Applicant was concerned, as all of the evidence clearly established that he had the responsibility which they found him not to have had.

The Tribunal finds that the JAB's criticism of the BOI of "having relied heavily on rumours, hearsay and allegations which were not substantiated" is not a fair or valid criticism of the investigations carried out by the BOI as its inquiries were in the main of a generalised nature so that the evidence taken had of necessity likewise to be of a generalised sort. The Tribunal also finds that there was ample evidence for the BOI find that the Applicant was at fault and to justify the criticisms that the BOI made of the Applicant's failure to discharge his supervisory duties. The Tribunal notes that the JAB failed to identify the evidence which they believed was untrustworthy or to state the reasons for so finding. The Tribunal is satisfied that the general finding made by the BOI critical of the Applicant was made by the body pre-

eminently suited to making those findings in that it was the BOI which had heard all of the witnesses and could judge their demeanour and attitude.

XVII. The Applicant bears the onus of showing that the administrative decision that he challenges is substantively or procedurally defective or vitiated by some other factor such as bias or prejudice. The Tribunal is satisfied that the decision was based on the conclusions reasonably drawn by the Respondent from the report of the BOI and that the Applicant has failed to demonstrate any substantive or procedural defect, bias or prejudice, either on the part of the BOI or on the part of the Respondent.

XVIII. The Applicant argues that the Respondent's findings that he had been guilty of gross negligence had no foundation, claiming that gross negligence is measured by the damage the negligence has caused or by the intention of the actor found to have been guilty of such negligence. The Tribunal is satisfied that the Applicant's definition of "gross negligence" is erroneous. As the Tribunal stated in Judgement No. 742, Manson, para. XIV (1995), "[g]ross negligence invokes an extreme and reckless failure to act as a reasonable person would with respect to a reasonably foreseeable risk." It was reasonable for the Respondent to conclude that the Applicant's conduct had fallen well below a standard of care which was expected of him in the supervising of the SHP and that he had failed to observe or to report upon gross abuses which were taking place therein or to take remedial steps to eliminate or reduce those abuses. The BOI's finding that the initial report carried out by the Applicant was in effect a whitewash is in the opinion of the Tribunal clearly justified and further demonstrates gross negligence on the Applicant's part. The Applicant's willingness to allow the use of local blue ration cards instead of the appropriate SHC index cards which were less vulnerable to abuse clearly indicated a recklessness and a high degree of negligence. The Tribunal is fully satisfied that the findings of the Respondent that the Applicant had been guilty of gross negligence were clearly justified so that the decision to terminate his services "in the interests

of the Agency" was taken in the proper exercise of the Respondent's power to impose a disciplinary sanction and was clearly lawful.

XXI. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

Geneva, 30 July 1999

Maritza STRUYVENBERG
Executive Secretary